

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTHONY DUANE WEBB,

Plaintiff,

v.

JACOB GOLLIHUGH, et al.,

Defendants.

Case No. 2:21-cv-00421-BHS-TLF

**ORDER TO SHOW CAUSE OR
AMEND THE COMPLAINT**

This matter is before the Court on plaintiff's filing of a civil rights complaint.

Plaintiff has been granted *in forma pauperis* status in this matter and is proceeding *pro se*. Considering the deficiencies in the complaint discussed below, however, the undersigned will not direct service of the complaint at this time. On or before May 5, 2021, plaintiff must either show cause why defendant King County D.A.J.D. should not be dismissed or file an amended complaint.

DISCUSSION

The Court must dismiss the complaint of a prisoner proceeding *in forma pauperis* “at any time if the [C]ourt determines” that the action: (a) “is frivolous or malicious”; (b) “fails to state a claim on which relief may be granted” or (c) “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915A(a), (b). A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745 F.3d 1221, 1228 (9th Cir. 1984).

1 Before the Court may dismiss the complaint as frivolous or for failure to state a
 2 claim, though, it “must provide the [prisoner] with notice of the deficiencies of his or her
 3 complaint and an opportunity to amend the complaint prior to dismissal.” *McGuckin v.*
 4 *Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992); *see also Sparling v. Hoffman Constr., Co.,*
 5 *Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Noll v. Carlson*, 809 F.2d 1446, 1449 (9th Cir.
 6 1987). On the other hand, leave to amend need not be granted “where the amendment
 7 would be futile or where the amended complaint would be subject to dismissal.” *Saul v.*
 8 *United States*, 928 F.2d 829, 843 (9th Cir. 1991).

9 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (1) the
 10 conduct complained of was committed by a person acting under color of state law, and
 11 (2) the conduct deprived a person of a right, privilege, or immunity secured by the
 12 Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).
 13 Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these
 14 elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

15 Here, plaintiff alleges that defendants Jacob Gollihugh and Brandon Teeter, who
 16 are King County Jail officers, used excessive force against him. Dkt. 1-1. Plaintiff has
 17 explained the alleged actions of defendants Gollihugh and Teeter sufficiently to pass the
 18 Court’s screening.

19 However, plaintiff also seeks to bring his claim against “King County D.A.J.D”
 20 (the “Jail”), the facility where he is confined. Dkt. 1-1 at 3. A jail is not proper defendant
 21 because it is not a “person” that is capable of being sued under Section 1983. Rather,
 22 King County would be the proper defendant. *See Monell v. New York City Dept. of*
 23 *Social Services*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Wright v.*

1 *Clark County Sheriff's Office*, 2016 WL 1643988, *2 (W.D. Wash. April 26, 2016). To
2 state a claim against a municipality like King County, a plaintiff must show that the
3 defendant's employees or agents acted through an official custom, pattern, or policy
4 permitting deliberate indifference to, or violating, the plaintiff's civil rights, or that the
5 entity ratified the unlawful conduct. *Monell*, 436 U.S. at 690-91. A plaintiff must show
6 (1) deprivation of a constitutional right; (2) the municipality has a policy; (3) the policy
7 amounts to deliberate indifference to a plaintiff's constitutional rights; and (4) the policy
8 is the moving force behind the constitutional violation. See *Oviatt v. Pearce*, 954 F.3d
9 1470, 1474 (9th Cir. 1992).

10 Plaintiff has not named King County as a defendant and has also not alleged
11 facts demonstrating that it is liable. See Dkt. 1-1. If plaintiff seeks to sue King County,
12 he must name it as a defendant and allege facts sufficient to meet the required
13 elements of a claim against a municipality, including showing how King County violated
14 his constitutional rights.

15 CONCLUSION

16 Due to the deficiencies described above, the Court will not serve the complaint.
17 Plaintiff may show cause why his claim against the Jail should not be dismissed or may
18 file an amended complaint to cure, if possible, the deficiencies noted herein, **on or**
19 **before May 5, 2021**. If an amended complaint is filed, it must be legibly rewritten or
20 retyped in its entirety and contain the same case number. Any cause of action alleged in
21 the original complaint that is not alleged in the amended complaint is waived. *Forsyth v.*
22 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds*,
23 *Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

1 The Court will screen the amended complaint to determine whether it states a
2 claim for relief cognizable under 42 U.S.C. § 1983. If the amended complaint is not
3 timely filed or fails to adequately address the issues raised herein, the undersigned will
4 recommend dismissal of defendant King County D.A.J.D. from this action.

5 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.
6 § 1983 civil rights complaint and for service, a copy of this Order and the *Pro Se*
7 Information Sheet.

8 Dated this 5th day of April, 2021.

9
10 Theresa L. Fricke

11 Theresa L. Fricke
12 United States Magistrate Judge
13
14
15
16
17
18
19
20
21
22
23
24
25